

CHAPTER NO. 347

SENATE BILL NO. 922

By Harper

Substituted for: House Bill No. 979

By Briley, Garrett, Robinson, Harwell, Pruitt, Langster, Brenda Turner

AN ACT To amend Tennessee Code Annotated, Title 6, Chapter 54, relative to graffiti removal.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 6, Chapter 54, Part 1, is amended by adding the following language as a new section:

6-54-126(a) For the purpose of promoting the public safety, health, welfare, convenience and enjoyment, to protect the public investment in public property, and to preserve and enhance the scenic beauty of property visible from publicly owned property, the General Assembly hereby finds and declares that graffiti constitutes a public nuisance which may be abated in accordance with the provisions of this section, or by civil actions or suits brought in the circuit or chancery courts as provided by the general law. The authority provided in this section is permissive and not mandatory and may be exercised by a municipality in accordance with this section upon the adoption of an ordinance.

(b) As used in this act, unless the context otherwise requires:

(1) "Advertising" means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner or tenant of the property, or an agent of such owner or tenant, for the purpose of promoting products or services or conveying information to the public;

(2) "Graffiti" means, without limitation, any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, fence, gate, building or other structure; provided, this definition shall not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, by an authorized agent for such owner or tenant, or unless otherwise approved by the owner or tenant;

(3) "Municipality" as used in this section, includes incorporated cities and towns and metropolitan governments;

(4) "Publicly owned property" means the property owned or controlled by a federal, state or local governmental entity,

including, but not limited to, public parks, streets, roads and sidewalks;

(5) "Tenant" means any person shown by the records of the register of deed's office as a lessee of property, or any person lawfully in actual physical possession of property.

(c) Any municipality may use municipal funds to remove graffiti or other inscribed material from publicly owned real or personal property or privately owned real or personal property visible from publicly owned property and located within the municipality and to replace or repair publicly owned property or privately owned property visible from publicly owned property within that municipality that has been defaced with graffiti or other inscribed material.

(d) The municipality shall be authorized to remove the graffiti or other inscribed material, or, if the graffiti or other inscribed material cannot be removed cost-effectively, to repair or replace that portion of the property that was defaced, but not the painting, repair, or replacement of other parts of the property that were not defaced by graffiti and may designate by ordinance an administrative officer or administrative body to perform the functions set forth in this section.

(e)(1) The removal, repair, or replacement may be performed, in the case of publicly owned real or personal property, only after securing the consent of the public entity having jurisdiction over the property.

(2) In the case of privately owned real or personal property visible from publicly owned property, the removal, repair, or replacement may be performed after the property owner and the tenant, if any, give their written consent to the municipality authorizing removal of the graffiti.

(f) The municipality may also use municipal funds for anti-graffiti education, operate a "hot line" for the purpose of receiving reports of unlawful application of graffiti on public or private property, and operate a program of financial reward, not to exceed one thousand dollars (\$1,000), for information leading to the arrest and conviction of any person who unlawfully applies graffiti to any public property or private property visible from the public right-of-way.

(g) Removal of graffiti by a municipality pursuant to the provisions of this section shall be performed at the sole expense of the municipality. In removing the graffiti, the municipality shall consult with the property owner or tenant and arrive at a method of removal that does not result in further damage or harm to the property. If the municipality and the property owner or tenant are unable to agree on a method of removal, the municipality shall not remove the graffiti. In removing the graffiti, the municipality shall restore the property as nearly as possible to the condition as it existed immediately prior to the graffiti being placed on the property. Nothing in this section shall be construed to impair or limit the power of the municipality to define and declare nuisances and to cause their removal or abatement under any procedure now provided by law for the abatement of any public nuisances.

(h) In removing, repairing or replacing the real or personal property pursuant to this section, the municipality or county may use the services of persons ordered to perform those services by a general sessions, criminal or juvenile court.

(i) The municipality and its officers, employees, agents, volunteers and persons ordered to perform nuisance removal by a general sessions, criminal or juvenile court shall not be liable for any damages or loss of property:

(A) due to the removal of graffiti performed pursuant to the provisions of this section;

(B) due to the repair or replacement of the property performed pursuant to the provisions of this section; or

(C) due to the failure by the municipality to remove, repair or replace property defaced by graffiti pursuant to the provisions of this section.

SECTION 2 This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 24, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 14th day of June 1999


DON SUNDQUIST, GOVERNOR